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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,855	09/26/2003	Rence Tufano-Sisca	SISCA	1273
26009	7590	09/21/2005		
ROGER M. RATHBUN 13 MARGARITA COURT HILTON HEAD ISLAND, SC 29926			EXAMINER MORAN, KATHERINE M	
			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/672,855

Applicant(s)

TUFANO-SISCA, RENEE

Examiner

Katherine M. Moran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10 and 12-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment filed 5/2/05 has been received and reviewed. Applicant amended claims 1, 7, and 13 and submitted an amendment to the specification.

Accordingly, claims 1-19 are pending in the application.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kronenberger (U.S. 5,321,854). Kronenberger discloses the invention as claimed. Kronenberger teaches a baseball type cap 50' (Fig.7) for tightly encircling the hair of a person, the cap comprised of a flexible material and having a front portion comprising a visor extending outwardly from the front portion of the cap, the cap further having a pair of generally triangular flaps 104,106 extending rearwardly from the visor, the flaps each having lower edges, the lower edges having elongated hook and loop 110,112 located along the lower edges of the flaps, the securing means adapted to join the elongated lower edges of the flaps together to cause one of the flaps to substantially overlap the other of the flaps and form the cap. The cap further includes a crown portion 52", with a small opening 90"" formed proximate the crown portion, with the opening configured to

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tightly encircle the hair of a person passing through the small opening. Kronenberger teaches that the size of the opening can be modified by varying the overlap of the flaps. Kronenberger also teaches that the opening can be of any shape so long as the effective diameter is on the order of one or more inches. Accordingly, flaps 104,106 could be manipulated and mated to form a tear drop shaped opening with a narrow portion extending rearwardly and a wider portion located toward the apex of the crown.

3. Claims 1, 3, 6, 7, 10, 12, 13, 15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kang (Des. 296,496). Kang discloses the invention as claimed. Kang teaches a baseball type cap for tightly encircling the hair of a person, the cap comprised of a flexible material and having a front portion comprising a visor extending outwardly from the front portion of the cap, the cap further having a pair of flaps extending rearwardly from the visor, the flaps each having lower edges, the lower edges having elongated securing means located along the lower edges of the flaps, the securing means adapted to join the elongated lower edges of the flaps together to cause one of the flaps to substantially overlap the other of the flaps and form the cap. The cap further includes a crown portion, with a small opening formed proximate the crown portion, with the opening configured to tightly encircle the hair of a person passing through the small opening.

### ***Response to Arguments***

4. Applicant's arguments filed 5/2/05 have been fully considered but they are not persuasive. Applicant argues that the present invention has securing means located

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along the lower edge of the flaps and not along the inner edges of the flaps that face each other, in contradistinction to the Kronenberger cap that has no such elongated securing means located along its lower edge. Kronenberger's cap does include elongated securing means 110,112 along its lower edge, with the securing means also extending along the inner edges. The inner edges are certainly overlapped during attachment of the securing means 110,112 to each other. Applicant's claim does not distinctly recite the absence of the securing means along the inner edges of the flaps. Further, the securing means are elongated in that they have a substantial length. Please note that the term "elongated" is a broad term of degree which essentially describes something which has a length. The remaining arguments do not serve to explicitly state the structural differences between Kronenberger and the present invention. With respect to Kang, Applicant argues that Kang does not have an elongated securing means located along the lower edge of the flaps, and that Kang hat's opening is not intended to have the hair of the user pass through. Kang's securing means are elongated in that they are slots and mating tabs having lengths. The intended use of Kang is not relevant in determining the patentability of the present invention. Kang's hat opening could be used to receive hair and as such, meets the claimed limitations.

***Allowable Subject Matter***

5. Claims 8, 9, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

September 16, 2005

A handwritten signature in black ink, appearing to read 'K Moran', with a stylized flourish at the end.

Katherine Moran

Primary Examiner, AU 3765